

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of	)	
	)	
<b>Rules and Regulations Implementing the</b>	)	CG Docket No. 02-278
<b>Telephone Consumer Protection Act of 1991</b>	)	CC Docket No. 92-90
	)	
	)	

**STATE OF INDIANA'S SUPPLEMENTAL COMMENTS IN  
OPPOSITION TO THE CONSUMER BANKERS ASSOCIATION'S PETITION  
TO DECLARE INDIANA'S TELEPHONE PRIVACY LAW PREEMPTED**

In their Petition to the Federal Communications Commission ("Commission") to declare Indiana's Telephone Privacy Law preempted by the Telephone Consumer Privacy Act ("TCPA") and corresponding Commission Rules, the Consumer Bankers Association contends that compliance with multiple telemarketing regulatory regimes is confusing, onerous, and burdensome. The facts, however, demonstrate that nothing could be further from the truth.

Telemarketers and companies that rely on telemarketing services have had to comply with a multistate regulatory regime for nearly a decade since the passage of the TCPA and before the implementation of the Commission's Rules promulgated in 2003. In fact, the overwhelming majority of states have had laws regulating telemarketing and telephone privacy on the books prior to the promulgation of the Commission's Rules. In this regard, state regulation of telemarketing is no different from multistate regulation of any of a number of commercial activities, such as sweepstakes and related promotions.

To facilitate compliance with this multistate regime, affordable software and services are available to telemarketers to manage both do-not-call lists and state telemarketing regulations. New York-based Call Compliance, Inc. ("Call Compliance"), for example, provides an automated screening service that blocks phone numbers registered on the federal and various



state do-not-call lists at a remarkably inexpensive rate - significantly less than one cent per call. XO Communications, Inc. ("XO Communications") and its customers, who rely heavily on telemarketing services, have used Call Compliance's services with great success. In addition to the blocking service, Call Compliance also provides several web-based tools to facilitate telemarketing compliance, including a comprehensive database of applicable state rules, searchable by state, topic, compliance and registration requirements, and by delivery method (wireline, wireless, facsimile, auto dialer). A more detailed additional description of XO Communications' use of this service is attached hereto, in the Declaration of Ms. Mervat Olds, former Product Manager for XO Communications, as Appendix I. It is important to note, as Ms. Olds' Declaration sets forth, that Call Compliance's TeleBlock® product is but one of several products and services that have been invented and brought to market to ease, if not automate, compliance with multiple state telemarketing rules for a variety of companies and industries at affordable rates.

Accordingly, the existence of these compliance services has supplied a cost-effective, straightforward tool to provide telemarketers with the easy ability to comply with the Commission's Rules, the Federal Trade Commission's Rules, and the various state rules governing telephone solicitations. Furthermore, as the attached Declaration of Ms. Olds demonstrates, the technology available to telemarketers for complying with the various state and federal Do-Not-Call laws and rules is remarkably inexpensive, as well as highly effective. Hence, the petitioners' claims that compliance with a multistate telemarketing regime is somehow burdensome or expensive are both unsubstantiated and absurd.



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Respectfully submitted,

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### CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing State Of Indiana's Supplemental Comments In Opposition To The Consumer Bankers Association's Petition To Declare Indiana's Telephone Privacy Law Preempted was filed electronically and served upon all counsel of record listed below, by United States Mail, first-class, postage prepaid, and email on the 29<sup>th</sup> day of July, 2005:

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## **APPENDIX I**

### **DECLARATION OF MS. MERVAT OLDS**



## **DECLARATION OF MERVAT F. OLDS**

I, MERVAT F. OLDS, declare as follows:

1. My name is Mervat F. Olds. Until earlier this year, I served as Product Manager for XO Communications in Reston, Virginia. In that capacity, I gained much of the personal knowledge and expertise regarding "Do-Not-Call" compliance systems that is reflected in this Declaration.

2. I obtained a Bachelor's degree in Purchasing and Logistics Management from Arizona State University in 1992. After obtaining this degree, I embarked on a twelve-year-long career in the telecommunications industry, principally in marketing long-distance products, services, and features to commercial clients of major telecommunications companies. Over those twelve years, I was employed by Cable & Wireless (1993-1996), Electric Lightwave (1996-1999), ICG Communications (1999-2000), and, ultimately, XO Communications, where I served as Product Manager from 2001 to 2005.

3. In my capacity as Product Manager at XO, I was responsible for XO's entire long-distance product line (including, for example, toll-free calling, international toll-free service, "1+" conference calling, "1+" outbound calling, and calling cards), and for building and maintaining relationships with XO's clients. We accomplished this by, among other things, ensuring the availability of products and services most important to our client base.

4. By Summer 2003, a number of XO's large-scale long-distance customers, who were either in or involved with the business of telemarketing, had expressed the need or desire for a feature that would ensure their efficient and low-cost compliance with the "Do Not Call" laws that had been enacted by several states and by the Federal government. I quickly



determined that XO would have to either create or obtain such a feature in order to maintain our good will, and ultimately our accounts, with these large long-distance customers.

5. At that time, I met with Dean Garfinkel, the Chairman of Call Compliance, Inc. (CCI), based in Glen Cove, New York. Mr. Garfinkel and CCI had developed, patented (U.S. Patent No. 6,330,317), and marketed the TeleBlock® screening service, an add-on feature for telecommunications providers like XO to provide to its telemarketing customers to ensure compliance with the Federal and various state Do-Not-Call laws. After meeting with Mr. Garfinkel and others at CCI, and learning about TeleBlock® and its functionality, I was convinced that XO should procure and provide for its clients the TeleBlock® compliance system. XO, acting upon my recommendation, did just that: By October 2003, XO had rolled out TeleBlock® as a feature of several of its major product lines.

6. TeleBlock®, when purchased as part of a package of XO's telecommunications services, provides telemarketers with a low-cost, convenient, and highly effective way of ensuring compliance with Federal and state Do-Not-Call laws.

a. The cost of TeleBlock®, to telemarketers who subscribed to a package of XO telecommunications services, was exceedingly minimal – \$0.01 per call. In other words, for every one hundred calls placed by a telemarketer using XO's telecommunications services, it would cost the telemarketer one dollar for the TeleBlock® service. Further, it is my understanding that, because of TeleBlock®'s minimal cost, some telecommunications providers are bundling that feature into their telecommunications packages in a way that makes that feature essentially free of cost to the telemarketer.

b. As for TeleBlock®'s convenience, it is automatic and virtually invisible to the telemarketer and its employees. Once a telemarketer subscribes to TeleBlock®, their



telecommunications provider (such as XO) automatically routes all outgoing calls through the TeleBlock® filter. Thus, all a telemarketer need do is dial a particular consumer's number, and before that call is connected, it is screened by CCI. If the consumer's number being dialed appears on the list of restricted numbers associated with that subscriber's account, the telemarketing caller gets a recorded message indicating that the call has been blocked. Otherwise, the call is completed as it normally would be.

c. TeleBlock®'s effectiveness was unquestionable. CCI's staff monitors all Do-Not-Call legislation and rules, as well as the Do-Not-Call registries, and maintains a separate database of numbers to be blocked for each telemarketer subscriber. The Federal and state databases are reviewed by CCI, and the customer's account updated, once a month. Moreover, TeleBlock® allows telemarketers to take account of exceptions, exemptions, or other differences that are not universally available under all Do-Not-Call laws by adding or deleting numbers (or categories of numbers) from that telemarketer subscriber's individual account. Not a single XO customer using the TeleBlock® feature was fined for a Do-Not-Call violation while I was employed by XO, and that includes several telemarketing customers of XO who were regularly fined for such violations before they implemented the TeleBlock® service.

7. TeleBlock® is, to my knowledge, universally available to all telephone carriers – and it is currently offered by other major providers (in addition to XO) such as MCI, Qwest, Paetec Communications, and VarTec Solutions. It can service large clients like telemarketing firms, smaller businesses, and even businesses that use internet-based telephone networks.

8. TeleBlock®, of course, is not the only product available for Do-Not-Call compliance. Gryphon Networks ([www.gryphonnetworks.com](http://www.gryphonnetworks.com)) offers a system that, among other things, automatically accounts for variations in Do-Not-Call laws, such as specific curfew times



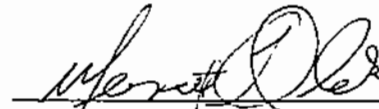
and existing-business-relationship exemptions. Other products for Do-Not-Call compliance are available from DNCSolution ([www3.dncsolution.com](http://www3.dncsolution.com)), StrikeIron ([www.strikeiron.com](http://www.strikeiron.com)), Anchor Computer ([www.anchorcomputer.com](http://www.anchorcomputer.com)), and Red Clay Media ([www.redclaymedia.com](http://www.redclaymedia.com)), among others. Nor is TeleBlock® necessarily the least expensive. A large telemarketer utilizing a "list-scrubbing" compliance tool could expect to pay less than \$.002 per call to check its phone lists against multiple Do-Not-Call registries. I would therefore expect Do-Not-Call compliance systems to continue to improve, and become even less expensive than they are currently, thanks to the presence of this wide competition. Each of these products is explained in greater detail at these companies' websites.

9. Telemarketers have generously praised many of these systems. The CCI website contains testimonials from TeleBlock® customers stressing how easy that product makes compliance with Do-Not-Call laws: "The service is working beautifully. I have yet to run across anyone that was on a DNC list;" TeleBlock® "is very simple to use and the customer service is excellent;" "TeleBlock® seamlessly integrated with all of our different types of dialing equipment;" "easy to administer. I have zero mistakes." Customers of Gryphon Networks have expressed similarly effusive praise, according to that company's website.

10. In my opinion, based on my experience in the telecommunications industry generally, and with Do-Not-Call compliance issues and products in particular, these compliance products offer telemarketers a wide variety of extremely simple, inexpensive, and highly effective options for complying, simultaneously, with the Federal Do-Not-Call law and the various state Do-Not-Call laws, without working any significant burden (whether cost, complexity, or effectiveness) on those telemarketers.



I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on July 25, 2005.



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Mervat F. Olds